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SUPPORTING THE RIGHTS TO NATURE: ASSESSING THE MORALLY RELEVANT ASPECTS

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Our actions towards the living are contingent on how we understand their moral worth. Assigning moral worth to the living means we hold a level of respect for their existence. Albert Schweitzer, Christopher Stone, and Paul Taylor are all scholars that have expressed ideas of respect and reverence for life, where they challenged ideas of our willingness to accept a reverence for life beyond just human comprehension. In addition, they include nuanced interpretations of good and evil, where elements of responsibility, self-sacrifice, intrinsic motivation, and love are put forward.

Paul Taylor's biocentric outlook holds a holistic view where humans are an insignificant part of the complex web of interconnected life on Earth. He views each individual organism as pursuing their own good for the means of survival. For Taylor, a mutually reciprocal relationship of well-being does not exist between humans and the rest of the living world, since he asserts that human well-being is biologically dependent on other beings, while the reverse is not true. When this universal truth is realized, what follows is a subsequent acceptance of a view that regards all living beings as possessing moral worth. Only then we can adopt completely new attitudes of respect towards non-human entities.[1] Accepting this universal truth also means our moral and non-moral standards are not anthropocentric in essence.

Christopher Stone, in his paper: *Should Trees Have Standing? Toward Legal Rights for Natural Objects,* enforces the idea that something having only extrinsic value precludes our ability to provide degrees of legal protection towards it. To allow an entity to have standing in a jural society, three conditions must be satisfied: the entity can institute legal actions to fulfill its own requirements, the court must take injury into account when allowing legal relief for the entity, and the subsequent relief must provide a reasonable benefit to the entity.[2] Assigning and applying these standards can help define moral versus non moral obligations. In current Western

[1] Taylor 2016, 66. Retrieved from Williston
[2] Stone 2016, 51. Retrieved from Williston

environmental, constitutional, and property law, natural objects do not have standing in their own right, the damages unique to nature are not counted in determining court outcomes, and nature doesn't accrue any awards from the court outcome.[3] Our laws are intrinsically limited to a realm of anthropocentrism where non-human entities are excluded.

Schweitzer recognizes true philosophy as starting from comprehensive facts of consciousness. What remains true throughout time is the will-to-live among all living entities, which is a process of balancing good and evil to sustain ourselves. The "good" and "evil" forces are forever changing relative to the present time in which history is created, however, the necessity within itself to balance both are always present and consistent among all those who are living.[4] An intellectual expression of treating life with reverence is a part of the balancing process and is a real ethical element for enabling moral virtue. Similarly, to Taylor, the human is not the only instance of significant will-to-live in this world. To realize the experiences of all who are alive to be connected is an acknowledgement and basis for expanding our capacity to help all life whenever possible. For Schweitzer, we should be guided in ways that minimize our ability to interfere with another living entity's balancing of good and evil. In other words, we should know that our actions are responsible for interfering with the experiences of non-human beings.

Taylor, Stone, and Schweitzer all have overlapping viewpoints on our moral obligations toward non-human entities. Together they provide one overarching premise which will be used to support the environmental concern investigated in this essay, which is about giving rights to nature. By assigning rights to nature, we are denying human superiority over other species. This is of moral concern because recognizing rights to nature would enable us to change our conduct towards non-humans and the way we value them in our society. Subsequently, a nuanced framework for distinguishing good and bad actions toward all living beings - not just humans - can be established as a means to allow both to flourish in their experience.

Granting rights to nature means there is a duty to protect an entity that contains life. For instance, a river, or to protect any living species within itself just like how the law can uphold protection over a corporation. Nature being able to exercise its right to exist and flourish challenges the current human-centered legal paradigm that views nature as having only extrinsic value, meaning we currently protect nature only for the interests of humans. If we shift the paradigm to one that is Earth-centered, rights to nature implies that the entity has both intrinsic and extrinsic value, which places it in a position for equal moral judgement. Nature becomes protected and preserved for its own sake, not for human sake, although it is accepted here that our well-being is fundamentally related to the well-being of the non-human entity.

This is a moral issue because at this point in time, we are questioning whether it is right to allow nature to speak for itself and for its own interests outside of those who currently hold rights in court. If we choose to not pursue this line of action, we also question whether that would be morally unjust given the unprecedented unraveling of global environmental crises. The mere fact that we are considering the inclusion and recognition of rights to nature, alongside

[3] Stone 2016, 52. Retrieved from Williston

[4] Albert Schweitzer, *Reverence for Life: The Words of Albert Schweitzer*, (San Francisco: Harper San Francisco, 1993), pp. 1-100.

those who currently bear rights, speaks volumes on the question of whether our current legal framework is capable of addressing this situation, or if at this time it is morally reprehensible. This exact question is evocative of the thinking at the time of granting legal rights of citizenship to Black and African Americans, or to granting women's rights to vote, hold public office, enter into contracts, and to control their own bodily integrity and autonomy. During these times, the legal paradigm can be said to be centered around the white man, just as how now the paradigm has evolved to be centered around humans, irrespective of the many remaining inequalities and imperfections. Both Stone and Schweitzer admit that questioning the current ethic seems laughable. In the words of Schweitzer, an unfamiliar proposition can be seen as "an object of ridicule when it is first acclaimed."[5] However, the previous historical events leading up to the precise present moment when the moral obligation is under question should be welcomed since it means a new truth has been recognized by society. Similarly, Stone reaffirms that "until the rightless thing receives its rights, we cannot see it as anything but a thing for the use of "us" – those who are holding rights at the time.[6]

Over the past five years there have been increasing jurisprudences, pieces of legislation, and political declarations challenging the current legal paradigm on recognizing rights to nature. Interestingly, within this new doctrine, rivers across the world have been recognized as the first precedent for being legally defined as a "subject" who holds rights instead of an "object".[7] For example, the Vilcabamba River in Ecuador, the Whanganui River in New Zealand, the Ganges in India, and the Atrato River in Columbia have been recognized in court rulings as having rights.[8] In 2008, Ecuador set the first precedence for including the rights of nature in Articles 71 – 74 of Chapter 7, Rights of Nature, in its constitution. I have provided an excerpt from Article 71:

> "Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.
>
> All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.
>
> The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem."[9]

After its enactment, it was on March 30th, 2011, that the rights of nature were recognized by the court for the first time. The court ruling recognized the plaintiff's right to sue on the basis of Article 71.[10] The court applied the precautionary principle to halt any further construction of a

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[5] Schweitzer,
[6] Stone 2016, 51. Retrieved from Williston
[7] Lidia Cano Pecharroman, "Rights of Nature: Rivers That Can Stand in Court," *Resources* 7, no. 13 (2018): pp. 1-14. https://doi.org/10.3390/resources7010013.
[8] Cano Pecharroman, 6-7.
[9] Ecuador. Const. art. 71-74. Retrieved from https://www.constituteproject.org/constitution/Ecuador_2008.pdf
[10] Cano Pecharroman, 6-7.

road next to the Vilcabamba River. Although the respect for both nature and local human rights to development are recognized by the constitution, the court concluded that for this specific case, the rights do not collide because the interests of one can still be achieved while respecting the others' interests.[11] When we give rights to nature, the potential legal outcomes broaden. International cases provide proof that when we assign rights to nature, the resulting discourse of our actions toward environmental protection look different. This reflects the change in value for the new rights-bearer, where we now have a moral obligation to act differently towards them in a way that encompasses a respect of equal value. Theoretically it also means that when individuals violate the law, they are subject to punishment, although this is still incipient in legal structures with respect to "nature persons".

The traditional human-centered legal paradigm asserts human dominance and superiority over other species since no other non-human species holds legal entitlement. This current legal framework will continue to place us under duress for when we try to adopt laws, practices, and policies that aim to protect the environment. At its core, a right can be thought of as a tool to preserve a standard essential to the future exercise of them by future generations.[12] Given that nature is fundamental to our flourishing and well-being, and we have accepted that the current generations' actions will affect the well-being of future generations, we too should then expect our same actions to impact non-human persons. Protecting the right of nature means protecting the human right to health and prosperity. This means the current generation has a moral responsibility to leave this world in a state where the well-being of future generations is at least at the same level as the current generation. This debate need not only be answered through economics. The environmental concern of recognizing rights to nature must also be assessed from an ethical and moral standpoint, which unsurprisingly, theoretical economics fails to frequently address.

Rejecting the idea of human superiority over other species entails species impartiality.[13] As Stone reminds us, the acceptance of this doctrine places neither species as "higher" or "lower". All who are entitled possess the same inherent worth that make it suitable for all moral agents to adopt respect and judgment towards the rights-holder.[14] Similarly, Hickel argues in his book, *Less is More: How degrowth will save the world*, that the world is still emulating assumptions from Descartes even though science began to diverge away from dualism beginning in the 1950s.[15] Dualism views humans as the only real subjects, while other beings are considered as objects. However, philosophers such as Edmund Husserl, Maurice Merleau-Ponty, and David Abram challenged this idea by introducing the field of phenomenology, which stipulates that our experiences are shaped through phenomena we observe, and that our very sense of self is an aggregation of the interactions we have with living and non-living beings.[16] Phenomenology broke down the distinction between mind and body, which supports the notion that all living beings, because they have a body, also have subjective experiences too.

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[11] Ibid, 112.
[12] Ibid, 3.
[13] Stone 2018, 65. Retrieved from Williston
[14] Ibid, 66.
[15] Jason Hickel, *Less Is More: How Degrowth Will Save the World*, (London: Windmill Books, 2021), pp. 1-336
[16] Hickel, pp. 267 - 269.

Essentially, living beings are "all engaged with each other in a sensual dance of perception, an ongoing dialogue through which we come to know the world."[17] In addition, Husserl argued that the universe of experience is not defined by subject to object relations but instead, an inter-subjective relation that is collectively produced.[18] Phenomenology contains similar underpinnings of animism, which entail that when we view nature and non-human entities as subjects too, the boundaries of legal personhood can be stretched beyond the current human comprehension of experience and incorporate non-human experiences and interests.[19]

Although it is still largely debated whether certain natural ecosystems, such as a river, can be considered a living entity in a courtroom, and therefore hold legal personhood, this topic of discussion will not be addressed here. A more realistic, reasonable, and tangible counterargument to recognizing the rights to nature is the ability for this new designation of rights and associated moral obligations to conflict with certain economic objectives. If we assign rights to nature in our constitution and view it as having the same level of moral standing as humans, there will be situations where conflicting interests between humans and nature will occur. For the sake of economic development, by allowing nature to exercise its right to be protected and unharmed, may disproportionately affect efforts of economic development that seek to improve the well-being of humans, especially on local levels. The theoretical framework for the economics of sustainable development provides a case in point.

Economists have distinguished between four types of capital stock which in constant recombination can be used to maintain a constant level of utility from consumption, across generations.[20] The intention of this theory is sensible regarding public investment, finance, and macroeconomics. However, it is only one approach among many competing ideas about what the relationship between economic development, consumption, and ecological sustainability should look like. Generally known as the Hartwick Rule, it presumes the different forms of capital to be substitutes, meaning the natural capital stocks can be depleted in the current generation (negative), if the future generation is provided with compensation in the form of another kind of capital.[21] Not only does this assume that each type of capital provides the same value to us, but as Dietz et al., (2008) recognize, "it is impossible for the global environmental and ecological system, which provides us with life support functions such as stable and tolerable climatic conditions, to be substituted in its entirety."[22] Along with other assumptions in the rule, such as the requirement of the economy to be in perfect competition, the theory is significantly limited in its ability to address how we ought to proceed with developments that threaten non-human entities and the ecosystems they inhabit.

Recognizing rights to nature will be deemed as an objection to some Western cultural practices, perhaps even capitalism itself, and the idea may appear to be unthinkable and

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[17] Ibid.
[18] Ibid.
[19] Ibid.
[20] Simon Dietz, Cameron J. Hepburn, and Nicholas Stern, "Economics, Ethics and Climate Change," *SSRN* (2007): pp. 1-20. http://dx.doi.org/10.2139/ssrn.1090572.
[21] Dietz, Hepburn, and Stern, 4.
[22] Ibid.

ridiculous at first. Williston addresses this point by asserting that a notion challenging conventional ways of redefining the line between those with moral standing and those without, is not by itself an argument against that notion.[23] It simply means that the system will never be perfect, requiring us to critically assess the current multitude of standards we follow when responding to societal change and environmental crises.

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[23] Bryon Williston, *Environmental Ethics for Canadians,* (Oxford: Oxford University Press, 2015), pp. 1-480.